

# HOUSE . . . . . No. 02233

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## The Commonwealth of Massachusetts

PRESENTED BY:

*Louis L. Kafka*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to death with dignity

☐.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Anne M. Gobi</i>	<i>5th Worcester</i>
<i>Christine E. Canavan</i>	<i>10th Plymouth</i>
<i>Kathi-Anne Reinstein</i>	<i>16th Suffolk</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>

# HOUSE . . . . . No. 02233

By Mr. Kafka of Stoughton, a petition (accompanied by bill, House, No. 2233) of Reinstein and others for legislation to allow for physician assisted suicide for qualified patients to end their lives  
Joint Committee on the Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION

SEE

☐ HOUSE  
☐ , NO. 01468 OF 2009-2010.]

## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the Year Two Thousand Eleven  
\_\_\_\_\_

An Act relative to death with dignity

☐.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

### 1 Section 1. Definitions

2 As used in this chapter, the following words shall, unless the context clearly indicates a different  
3 meaning, have the following meanings :

4 (1) "Adult" means an individual who is 18 years of age or older.

5 (2) (2) "Attending physician" means the physician who has primary responsibility for the care  
6 of the patient and treatment of the patient's terminal disease.

7 (3) (3) "Capable" means that in the opinion of a court or in the opinion of the patient's  
8 attending physician or consulting physician, psychiatrist or psychologist, a patient has the ability  
9 to make and communicate health care decisions to health care providers, including  
10 communication through persons familiar with the patient's manner of communicating if those  
11 persons are available.

12 (4) (4) "Consulting physician" means a physician who is qualified by specialty or experience  
13 to make a professional diagnosis and prognosis regarding the patient's disease.

14 (5) (5) "Counseling" means one or more consultations as necessary between a state licensed  
15 psychiatrist or psychologist and a patient for the purpose of determining that the patient is  
16 capable and not suffering from a psychiatric or psychological disorder or depression causing  
17 impaired judgment.

18 (6) (6) "Health care provider" means a person licensed, certified or otherwise authorized or  
19 permitted by the law of this state to administer health care or dispense medication in the ordinary  
20 course of business or practice of a profession, and includes a health care facility.

21 (7) (7) "Informed decision" means a decision by a qualified patient, to request and obtain a  
22 prescription to end his or her life in a humane and dignified manner, that is based on an  
23 appreciation of the relevant facts and after being fully informed by the attending physician of:

24 (8) (a) His or her medical diagnosis;

25 (b) His or her prognosis;

26 (c) The potential risks associated with taking the medication to be prescribed;

27 (d) The probable result of taking the medication to be prescribed; and

28 (e) The feasible alternatives, including, but not limited to, comfort care, hospice care  
29 and pain control.

30 (8) "Medically confirmed" means the medical opinion of the attending physician has been  
31 confirmed by a consulting physician who has examined the patient and the patient's relevant  
32 medical records.

33 (9) "Patient" means a person who is under the care of a physician.

34 (10) "Physician" means a doctor of medicine or osteopathy licensed to practice medicine by the  
35 Board of Medical Examiners for the Commonwealth of Massachusetts.

36 (11) "Qualified patient" means a capable adult who is a resident of Massachusetts.

37 (12) "Terminal disease" means an incurable and irreversible disease that has been medically  
38 confirmed and will, within reasonable medical judgment, produce death within six months.

39 Section 2 . Who may initiate a written request for medication.

40 (1) An adult who is capable, is a resident of Massachusetts, and has been determined by the  
41 attending physician and consulting physician to be suffering from a terminal disease, and who  
42 has voluntarily expressed his or her wish to die, may make a written request for medication for  
43 the purpose of ending his or her life in a humane and dignified manner.

44 (2) No person shall qualify under the provisions of this act solely because of age or disability.

45 Section 3. Form of the written request.

46 (1) A valid request for medication under this act shall be in substantially the form described in  
47 Section 6, signed and dated by the patient and witnessed by at least two individuals who, in the

48 presence of the patient, attest that to the best of their knowledge and belief the patient is capable,  
49 acting voluntarily, and is not being coerced to sign the request.

50 (2) (2) One of the witnesses shall be a person who is not:

51 (3) (a) A relative of the patient by blood, marriage or adoption;

52 (4) (b) A person who at the time the request is signed would be entitled to any portion of the  
53 estate of the qualified patient upon death under any will or by operation of law; or

54 (5) (c) An owner, operator or employee of a health care facility where the qualified patient is  
55 receiving medical treatment or is a resident.

56 (6) (3) The patient's attending physician at the time the request is signed shall not be a  
57 witness.

58 (4) If the patient is a patient in a long term care facility at the time the written request is made,  
59 one of the witnesses shall be an individual designated by the facility.

60 (7) Section 3. Attending physician responsibilities.

61 (1) The attending physician shall:

62 (2) (a) Make the initial determination of whether a patient has a terminal disease, is  
63 capable, and has made the request voluntarily;

64 (3) (b) Request that the patient demonstrate Massachusetts residency;

65 (c) To ensure that the patient is making an informed decision, inform the patient of:

66 (A) His or her medical diagnosis;

67 (B) His or her prognosis;

68 (C) The potential risks associated with taking the medication to be prescribed;

69 (D) The probable result of taking the medication to be prescribed; and

70 (E) The feasible alternatives, including, but not limited to, comfort care,  
71 hospice care and pain control;

72 (d) Refer the patient to a consulting physician for medical confirmation of the diagno  
73 sis, and for a determination that the patient is capable and acting voluntarily;

74 (e) Refer the patient for counseling if appropriate pursuant to Section 3B;

75 (f) Recommend that the patient notify next of kin;

76 (g) Counsel the patient about the importance of having another person present when the  
77 patient takes the medication prescribed pursuant to this act and of not taking the medication in a  
78 public place;

79 (h) Inform the patient that he or she has an opportunity to rescind the request at any time  
80 and in any manner, and offer the patient an opportunity to rescind at the end of the 15 day  
81 waiting period pursuant to Section 3E;

82 (i) Verify, immediately prior to writing the prescription for medication under this act,  
83 that the patient is making an informed decision;

84 (j) Fulfill the medical record documentation requirements of Section 3H;

85 (k) Ensure that all appropriate steps are carried out in accordance with this act prior to writing a  
86 prescription for medication to enable a qualified patient to end his or her life in a humane and  
87 dignified manner; and

88 (l)(A) Dispense medications directly, including ancillary medications intended to  
89 facilitate the desired effect to minimize the patient's discomfort, provided the attending physician  
90 is registered as a dispensing physician with the Board of Medical Examiners, has a current Drug  
91 Enforcement Administration certificate and complies with any applicable administrative rule; or

92 (B) With the patient's written consent:

93 (i) Contact a pharmacist and inform the pharmacist of the  
94 prescription; and

95 (ii) Deliver the written prescription personally or by mail to the  
96 pharmacist, who will dispense the medications to either the patient, the attending physician or an  
97 expressly identified agent of the patient.

98 (2) Notwithstanding any other provision of law, the attending physician may sign the patient's  
99 death certificate.

100 Section 3A. Consulting physician confirmation.

101 Before a patient is qualified under this act, a consulting physician shall examine the patient and  
102 his or her relevant medical records and confirm, in writing, the attending physician's diagnosis  
103 that the patient is suffering from a terminal disease, and verify that the patient is capable, is  
104 acting voluntarily and has made an informed decision.

105 Section 3B. Counseling referral.

106 If in the opinion of the attending physician or the consulting physician a patient may be suffering  
107 from a psychiatric or psychological disorder or depression causing impaired judgment, either  
108 physician shall refer the patient for counseling. No medication to end a patient's life in a humane  
109 and dignified manner shall be prescribed until the person performing the counseling determines  
110 that the patient is not suffering from a psychiatric or psychological disorder or depression  
111 causing impaired judgment.

112 Section 3C. Informed decision.

113 No person shall receive a prescription for medication to end his or her life in a humane and  
114 dignified manner unless he or she has made an informed decision as defined in Section 1 (7).  
115 Immediately prior to writing a prescription for medication under this act, the attending physician  
116 shall verify that the patient is making an informed decision.

117 Section 3D. Family notification.

118 The attending physician shall recommend that the patient notify the next of kin of his or her  
119 request for medication pursuant to this act. A patient who declines or is unable to notify next of  
120 kin shall not have his or her request denied for that reason.

121 Section 3E. Written and oral requests.

122 In order to receive a prescription for medication to end his or her life in a humane and dignified  
123 manner, a qualified patient shall have made an oral request and a written request, and reiterate  
124 the oral request to his or her attending physician no less than fifteen (15) days after making the  
125 initial oral request. At the time the qualified patient makes his or her second oral request, the  
126 attending physician shall offer the patient an opportunity to rescind the request.

127 Section 3F. Right to rescind request.

128 A patient may re scind his or her request at any time and in any manner without regard to his or  
129 her mental state. No prescription for medication under this act may be written without the  
130 attending physician offering the qualified patient an opportunity to rescind the requ est.

131 Section 3G. Waiting periods.

132 No less than fifteen (15) days shall elapse between the patient's initial oral request and the  
133 writing of a prescription under this act. No less than 48 hours shall elapse between the patient's  
134 written request and the wr iting of a prescription under this act.

135 Section 3H. Medical record documentation requirements.

136 The following shall be documented or filed in the patient's medical record:

137 (1) All oral requests by a patient for medication to end his or her life in a huma ne and dignified  
138 manner;

139 (2) All written requests by a patient for medication to end his or her life in a humane and  
140 dignified manner;

141 (3) The attending physician's diagnosis and prognosis, determination that the patient is capable,  
142 acting voluntarily an d has made an informed decision;

143 (4) The consulting physician's diagnosis and prognosis, and verification that the patient is  
144 capable, acting voluntarily and has made an informed decision;

145 (5) A report of the outcome and determinations made during counse ling, if performed;

146 (6) The attending physician's offer to the patient to rescind his or her request at the time of the  
147 patient's second oral request pursuant to Section 3E; and

148 (7) A note by the attending physician indicating that all requirements under this act have been  
149 met and indicating the steps taken to carry out the request, including a notation of the medication  
150 prescribed.

151 Section 3I. Residency requirement.

152 Only requests made by Massachusetts residents under this act shall be granted. Factors  
153 demonstrating Massachusetts residency include but are not limited to :

154 (1) Possession of a Massachusetts driver license;

155 (2) Registration to vote in Massachusetts;

156 (3) Evidence that the person owns or leases property in Massachusetts; or

157 (4) Filing of an Massachusetts tax return for the most recent tax year.

158 Section 3J. Reporting requirements.

159 (1)(a) The Department of Public Health shall annually review a sample of records maintained  
160 pursuant to this act.

161 (b) The department shall require any health care provider upon dispensing medication  
162 pursuant to this act to file a copy of the dispensing record with the division.

163 (2) The department shall make rules to facilitate the collection of information regarding  
164 compliance with this act. Except as otherwise required by law, the information collected shall  
165 not be a public record and may not be made available for inspection by the public.

166 (3) The department shall generate and make available to the public an annual statistical report of  
167 information collected under subsection (2) of this section.

168 Section 3K. Effect on construction of wills, contracts and statutes.

169 (1) No provision in a contract, will or other agreement, whether written or oral, to the extent the  
170 provision would affect whether a person may make or rescind a request for medication to end  
171 his or her life in a humane and dignified manner, shall be valid.

172 (2) No obligation owing under any currently existing contract shall be conditioned or affected by  
173 the making or rescinding of a request, by a person, for medication to end his or her life in a  
174 humane and dignified manner.

175 Section 3L. Insurance or annuity policies.

176 The sale, procurement, or issuance of any life, health, or accident insurance or annuity policy or  
177 the rate charged for any policy shall not be conditioned upon or affected by the making or  
178 rescinding of a request, by a person, for medication to end his or her life in a humane and  
179 dignified manner. Neither shall a qualified patient's act of ingesting medication to end his or her  
180 life in a humane and dignified manner have an effect upon a life, health, or accident insurance or  
181 annuity policy.

182 Section 3M. Construction of Act.

183 Nothing in this act shall be construed to authorize a physician or any other person to end a  
184 patient's life by lethal injection, mercy killing or active euthanasia. Actions taken in accordance  
185 with this act shall not, for any purpose, constitute suicide, assisted suicide, mercy killing or  
186 homicide, under the law.

187 Section 4. Immunities; basis for prohibiting health care provider from participation; notification;  
188 permissible sanctions.

189 Except as provided in Section 4B :

190 (1) No person shall be subject to civil or criminal liability or professional disciplinary action for  
191 participating in good faith compliance with th is act. This includes being present when a  
192 qualified patient takes the prescribed medication to end his or her life in a humane and dignified  
193 manner.

194 (2) No professional organization or association, or health care provider, may subject a person to  
195 censure , discipline, suspension, loss of license, loss of privileges, loss of membership or other  
196 penalty for participating or refusing to participate in good faith compliance with this act.

197 (3) No request by a patient for or provision by an attending physician of medication in good faith  
198 compliance with the provisions of this act shall constitute neglect for any purpose of law or  
199 provide the sole basis for the appointment of a guardian or conservator.

200 (4) No health care provider shall be under any duty, whether by contract, by statute or by any  
201 other legal requirement to participate in the provision to a qualified patient of medication to end  
202 his or her life in a humane and dignified manner. If a health care provider is unable or unwilling  
203 to carry out a patient 's request under this act, and the patient transfers his or her care to a new

204 health care provider, the prior health care provider shall transfer, upon request, a copy of the  
205 patient's relevant medical records to the new health care provider.

206 (5)(a) Notwithstanding any other provision of law, a health care provider may prohibit another  
207 health care provider from participating in this act on the premises of the prohibiting provider if  
208 the prohibiting provider has notified the health care provider of the prohibiting provider's policy  
209 regarding participating in this act. Nothing in this paragraph prevents a health care provider from  
210 providing health care services to a patient that do not constitute participation in this act.

211 (b) Notwithstanding the provisions of subsections (1) to (4) of this section, a health care  
212 provider may subject another health care provider to the sanctions stated in this paragraph if the  
213 sanctioning health care provider has notified the sanctioned provider prior to participation in this  
214 act that it prohibits participation in this act:

215 (A) Loss of privileges, loss of membership or other sanction provided pursuant  
216 to the medical staff bylaws, policies and procedures of the sanctioning health care provider if the  
217 sanctioned provider is a member of the sanctioning provider's medical staff and participates in  
218 this act while on the health care facility premises, as defined in M.G.L. Ch. 111, S.25B, of the  
219 sanctioning health care provider, but not including the private medical office of a physician or  
220 other provider;

221 (B) Termination of lease or other property contract or other nonmonetary  
222 remedies provided by lease contract, not including loss or restriction of medical staff privileges  
223 or exclusion from a provider panel, if the sanctioned provider participates in this act while on the  
224 premises of the sanctioning health care provider or on property that is owned by or under the  
225 direct control of the sanctioning health care provider; or

226 (C) Termination of contract or other nonmonetary remedies provided by  
227 contract if the sanctioned provider participates in this act while acting in the course and scope of  
228 the sanctioned provider's capacity as an employee or independent contractor of the sanctioning  
229 health care provider. Nothing in this subparagraph shall be construed to prevent:

230 (i) A health care provider from participating in this act while acting  
231 outside the course and scope of the provider's capacity as an employee or independent contractor;  
232 or

233 (ii) A patient from contracting with his or her attending physician and  
234 consulting physician to act outside the course and scope of the provider's capacity as an  
235 employee or independent contractor of the sanctioning health care provider.

236 (c) A health care provider that imposes sanctions pursuant to paragraph (b) of this  
237 subsection must follow all due process and other procedures the sanctioning health care provider  
238 may have that are related to the imposition of sanctions on another health care provider.

239 (d) For purposes of this subsection:

240 (A) "Notify" means a separate statement in writing to the health care provider  
241 specifically informing the health care provider prior to the provider's participation in this act of  
242 the sanctioning health care provider's policy about participation in activities covered by this act.

243 (B) "Participate in this act" means to perform the duties of an attending  
244 physician pursuant to Section 3, the consulting physician function pursuant to Section 3A or the  
245 counseling function pursuant to Section 3B. "Participate in this act" does not include:

246 (i) Making an initial determination that a patient has a terminal disease  
247 and informing the patient of the medical prognosis;

248 (ii) Providing information about the Massachusetts Death with Dignity  
249 Act to a patient upon the request of the patient;

250 (iii) Providing a patient, upon the request of the patient, with a referral  
251 to another physician; or

252 (iv) A patient contracting with his or her attending physician and  
253 consulting physician to act outside of the course and scope of the provider's capacity as an  
254 employee or independent contractor of the sanctioning health care provider.

255 (6) Action taken pursuant to Sections 3, 3A, 3B, and 3C shall not be the sole basis for a report of  
256 unprofessional or dishonorable conduct under M.G.L. Ch. 112, S. 5.

257 (7) No provision of this act shall be construed to allow a lower standard of care for patients in the  
258 community where the patient is treated or a similar community.

259 Section 4B. Liabilities.

260 (1) A person who without authorization of the patient willfully alters or forges a request for  
261 medication or conceals or destroys a rescission of that request with the intent or effect of causing  
262 the patient's death shall be guilty of a felony.

263 (2) A person who coerces or exerts undue influence on a patient to request medication for the  
264 purpose of ending the patient's life, or to destroy a rescission of such a request, shall be guilty of  
265 a felony.

266 (3) Nothing in this act limits further liability for civil damages resulting from other negligent  
267 conduct or intentional misconduct by any person.

268 (4) The penalties in this act do not preclude criminal penalties applicable under other law for  
269 conduct which is inconsistent with the provisions of this act.

270 Section 4C. Claims by governmental entity for costs incurred.

271 Any governmental entity that incurs costs resulting from a person terminating his or her life  
272 pursuant to the provisions of this act in a public place shall have a claim against the estate of the  
273 person to recover such costs and reasonable attorney fees related to enforcing the claim.

274 Section 5. Severability.

275 Any section of this act being held invalid as to any person or circumstance shall not affect the  
276 application of any other section of this act which can be given full effect without the invalid  
277 section or application.

278 Section 6. Form of the request.

279 A request for a medication as authorized by this act shall be in substantially the following form:

280 REQUEST FOR MEDICATION

281 TO END MY LIFE IN A HUMANE

282 AND DIGNIFIED MANNER

283 I, \_\_\_\_\_, am an adult of sound mind.

284 I am suffering from \_\_\_\_\_, which my attending physician has determined is a terminal disease  
285 and which has been medically confirmed by a consulting physician.

286 I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed  
287 and potential associated risks, the expected result, and the feasible alternatives, including  
288 comfort care, hospice care and pain control.

289 I request that my attending physician prescribe medication that will end my life in a humane and  
290 dignified manner.

291 INITIAL ONE :

292 \_\_\_\_\_ I have informed my family of my decision and taken their opinions into consideration.

293 \_\_\_\_\_ I have decided not to inform my family of my decision.

294 \_\_\_\_\_ I have no family to inform of my decision.

295 I understand that I have the right to rescind this request at any time.

296 I understand the full import of this request and I expect to die when I take the medication to be  
297 prescribed. I further understand that although most deaths occur within three hours, my death  
298 may take longer and my physician has counseled me about this possibility.

299 I make this request voluntarily and without reservation, and I accept full moral responsibility for  
300 my actions.

301 Signed: \_\_\_\_\_

302 Dated: \_\_\_\_\_

303 DECLARATION OF WITNESSES

304 We declare that the person signing this request:

305 (a) Is personally known to us or has provided proof of identity;

306 (b) Signed this request in our presence;

307 (c) Appears to be of sound mind and not under duress, fraud or undue influence;

308 (d) Is not a patient for whom either of us is attending physician.

309 \_\_\_\_\_ Witness 1/Date

310 \_\_\_\_\_ Witness 2/Date

311 NOTE: One witness shall not be a relative (by blood, marriage or adoption) of the person signing  
312 this request, shall not be entitled to any portion of the person's estate upon death and shall not  
313 own, operate or be employed at a health care facility where the person is a patient or resident. If  
314 the patient is an inpatient at a health care facility, one of the witnesses shall be an individual  
315 designated by the facility.

316 Section 7. Penalties.

317 (1) It shall be considered a felony for a person without authorization of the principal to willfully  
318 alter, forge, conceal or destroy an instrument, the reinstatement or revocation of an instrument or  
319 any other evidence or document reflecting the principal's desires and interests, with the intent  
320 and effect of causing a withholding or withdrawal of life-sustaining procedures or of artificially  
321 administered nutrition and hydration which hastens the death of the principal.

322 (2) Except as provided in subsection (1) of this section, it shall be considered misdemeanor for a  
323 person without authorization of the principal to willfully alter, forge, conceal or destroy an  
324 instrument, the reinstatement or revocation of an instrument, or any other evidence or document  
325 reflecting the principal's desires and interests with the intent or effect of affecting a health care  
326 decision.

327